IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1261

EARL BUTZ, SECRETARY OF AGRICULTURE,

Appellant

vs.

KAREN HEIN, Individually and on behalf of all other persons similarly situated,

Appellee

No. 75-1355

KEVIN J. BURNS, Commissioner of the Department of Social Services of the State of Iowa, et al.,

Appellants

vs.

KAREN HEIN, etc.,

Appellee

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Pursuant to Rule 53(1) of the Rules of this Court, motion is hereby made that Appellee Karen Hein, individually and on behalf of the members of the class which she represents, be allowed to proceed in forma pauperis without prepayment of costs or submission of printed copies of the Motion to Affirm. In support of this motion, Appellee states as follows:

1. All members of the class represented by Appellee Hein are in poverty, in that they are all eligible for federal Food Stamp assistance.

2. Appellee was permitted to proceed in forma pauperis in the District Court.

3. Appellee's affidavit in support of this motion is attached hereto.

Robert Bartels
Counsel for Appellee
University of Iowa
College of Law
Iowa City, Iowa 52242

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-1261
75-1355

EARL BUTZ, Secretary of Agriculture; and
KEVIN J. BURNS, Commissioner of the State
of Iowa Department of Social Services,

Appellant,

vs.

KAREN HEIN, et. al.,

Appellees

AFFIDAVIT

STATE OF IOWA)
) ss.
COUNTY OF MUSCATINE)

I, Karen Hein, being first duly sworn accoding to law, depose and say, in support of my Motion for Leave to Proceed In Forma Pauperis without being required to prepay costs or fees:

1. I am the Appellee in the above-entitled case.

2. Because of my poverty, I am unable to pay the costs of said case.

3. I am unable to give security for the same.

4. I believe I am entitled to the redress I seek in this case.

5. The nature of said case is briefly stated as follows: I brought a class action suit in forma pauperis before a three-judge United States District Court for the Southern District of Iowa seeking a declaratory judgment and injunctive against the Petitioners under Title 42 U.S.C. §1983.

The three-judge district court enjoined the Commissioner of Iowa State Department of Social Services from enforcing its statewide regulation disallowing any deduction for educational or training transportation expenses, for the purpose of computing the income of food stamp recipients and enjoined the Secretary of Agriculture from enforcing the analogous provisions of 7 C.F.R. 271.3(c)(1)(iii) on the grounds that those regulations conflict with the Food Stamp Act and deny due process and equal protection of the laws.

Karen Hein
Karen Hein

Duly witnessed and sworn to before me, a Notary Public, this 29th day of March, 1976.

Helen B VanDyke
Notary Public in and for Iowa

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vs.

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Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

MOTION TO AFFIRM

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IN THE SUPREME COURT OF THE UNITED STATES

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

MOTION TO AFFIRM

Pursuant to Rule 16 of the Rules of this Court, Appellee moves that the final judgment and decree of the District Court be affirmed on the ground that the questions presented were correctly decided below and are so insubstantial as not to require further argument.

QUESTIONS PRESENTED

1. Did the District Court err in holding that Appellants violated the Food Stamp Act by decreasing Appellee's and her family's Food Stamp benefits on the sole basis that Appellee received a State/Federal grant for additional expenses in connection with her participation in a government-sponsored "Individual Education and Training Plan," all of which grant concededly was expended on necessary educational travel expenses and therefore was not available for family food purchases.

2. Did the District Court err in holding that the above-described actions of the Appellants violated the Equal Protection and Due Process guarantees of the Fifth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

In October of 1968, Appellee Karen Hein was divorced and was awarded custody of her two minor children; at that time, she became eligible for welfare assistance, including AFDC and Food Stamps. In September of 1972, the Muscatine, Iowa, Department of Social Services approved Appellee Hein for an "Individual Education and Training Plan" under which she would receive training at the St. Luke's School of Nursing in Davenport, Iowa. This was the closest facility to Muscatine, Iowa, Appellee Hein's place of residence, that provided such training.[1] Under her Individual Education and Training Plan, Appellee was granted a training expense allowance of $44.00 per month, all of which was spent for necessary commuting.

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[1] The distance between Muscatine and Davenport is approximately 25 miles.

Because of Appellee Hein's receipt of this educational expense grant, the State Appellants,[2] consistently with state and federal regulations governing the Food Stamp Program, added $44.00 per month to Appellee Hein's "income" for purposes of calculating the price which she would have to pay in order to purchase a set amount of Food Stamp coupons for herself and her children. At the same time, the Appellants did not deduct from "income" Appellee's additional educational commuting expenses (although deductions are given under federal and/or state regulations for such educational expenses as tuition, fees, child care, and books). The end result was that Appellee Hein was required to pay $58.00 per month for $94.00 worth of Food Stamp coupons, rather than the $46.00 per month she was required to pay for the same amount of Food Stamps before she was approved for her Individual Education and Training Plan and received her grant for educational commuting expenses. In short, Appellee Hein's Food Stamp benefits, and hence her ability to purchase an adequate diet for herself and her two children, were reduced by at least $12.00 per month (or 25% of the benefits previously received),[3] solely on the basis of her receipt of a state-approved educational expense allowance, all of which was necessary for additional travel expenses in connection with her participation in a government-sponsored Individual Education and Training Plan and none of which was available for family food purchases.

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[2] Kevin J. Burns, Commissioner of the Department of Social Services of the State of Iowa, and Elizabeth Masterson, Director of the Muscatine, Iowa Department of Social Services, Appellants in No. 75-1355

[3] Under present Food Stamp purchase-price schedules, the increase in the purchase price for Appellee Hein would be $18.00. Moreover, it should be noted that unless a recipient such as Appellee can somehow divert sufficient funds from non-food expenses to make up for the increase in her Food Stamp purchase price, she will be unable to purchase her full allotment of Food Stamp coupons -- with the result that her food-purchasing power will be affected even more severely.

After pursuing administrative remedies, Appellee brought this action on her own behalf and on behalf of all other persons similarly situated, the class members being all persons whose transportation allowances received under Individual Education and Training Plans were included as "income" by the Department of Social Services in determining the price they must pay for their allotted food stamps. The rather lengthy and complex subsequent history of this action is adequately set out in the Jurisdictional Statement filed on behalf of Appellant Butz at pp. 8-10.

All Appellants now appeal from the unanimous Order of the District Court that the Appellants be

> permanently enjoined from including in the monthly net income of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses, pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's net monthly income in determining such person's adjusted net income. (402 F. Supp. at 408; Jurisdictional Statement of Appellant Butz at 24a-25a.)

In addition, the State Appellants complain of the District Court's order that the future price of Food Stamps for recipients in the class represented by Appellee be reduced in sufficient amount and for a sufficient period of time to compensate those recipients for Food Stamp benefits wrongfully denied in the past.

ARGUMENT

I.

AS APPLIED TO APPELLEE, THE FEDERAL AND STATE REGULATIONS CHALLENGED IN THIS ACTION VIOLATED THE FEDERAL FOOD STAMP ACT.

A. The District Court held that the Appellants' reduction of Appellee's family's Food Stamp benefits solely on the basis that Appellee was receiving a State grant for necessary travel expenses in connection with her participation in a State-sponsored "Indi-

vidual Education and Training Plan" violated the Food Stamp Act of 1964, 7 U.S.C. §§2011, et seq. (1970). This holding was based in part on the District Court's conclusion that one of the central purposes of the Food Stamp Act was to enable households with low food-purchasing power to obtain a nutritionally adequate diet -- a conclusion that is not challenged by the Appellants, and which is amply supported by the District Court's opinion, 402 F. Supp. at 404-405, Jurisdictional Statement of Appellant Butz at 12a-13a, and by the language[4] and legislative history[5] of the Food Stamp Act.

As applied to Appellee Hein and the class of recipients she represents, the state and federal regulations challenged in this action were directly contrary to the above-described purpose of the Food Stamp Act. The $44.00-per-month grant received by Appellee Hein was designed and used for additional expenses in connection with her participation in a State-sponsored training

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4 Section 2 of the Act, 7 U.S.C. §2011, provides that one purpose of the Act is to "raise levels of nutrition among low-income households," and further states a Congressional finding that "the limited food-purchasing power of low-income households contributes to hunger and malnutrition among members of such households." Moreover, 7 U.S.C. §2013(a) provides that the Food Stamp Program formulated by the Secretary should be one "under which . . . eligible households . . . shall be provided with an opportunity to obtain a nutritionally adequate diet . . ." Finally, 7 U.S.C. §2014(a) provides that participation in the Food Stamp Program "shall be limited to those households whose income and other resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet."

5 "The purpose of the Food Stamp Program is to assist low-income households to increase their expenditures for food . . ." Report of the House Committee on Agriculture, 1970 U.S. Code Cong. & Adm. News 6025,6027. See also, House Report No. 1022, Explanation of the Department of Agriculture, 1964 U.S. Code Cong. & Adm. News 3284; Message of the President, 1964 U.S. Code Cong. & Adm. News 3275, 3283.

program. These were necessary expenses which she would not otherwise have had to incur, and her grant did not in any way increase Appellee's ability to purchase an adequate diet for herself and her two children. Yet the Appellants substantially reduced the amount of Appellee's Food Stamp assistance solely because of her receipt of the grant. This decrease in Food Stamp benefits on the basis of a State grant that had no effect on Appellee's food-purchasing power was totally irrational, and directly violative of the Food Stamp Act's purpose to increase the food-purchasing power of low-income households so as to enable them to obtain a nutritionally adequate diet. 402 F. Supp. at 404-405, Jurisdictional Statement of Appellant Butz at 13a-14a. This violation was especially serious in light of the fact that it affected not only Appellee herself but her children as well.

B. The District Court also correctly found that the Appellants' regulations violated a second purpose of the Food Stamp Act. Section 5 of the Act, 7 U.S.C. §2014(c), provides that a household is not eligible for Food Stamp Assistance if an able-bodied member has failed to register for or accept employment -- unless that household member is a caretaker of dependents or a "bona fide student in any accredited school or training program, or employed and working at least 30 hours per week . . . ." As the District Court concluded, this provision demonstrates that "Congress sought to encourage food stamp recipients to secure education and training." 402 F. Supp. at 405; Jurisdictional Statement of Appellant Butz, at 15a. But the federal and state regulations challenged in this action undeniably discouraged participation in state-sponsored training programs by decreasing the food-purchasing power of recipients solely on the basis of their receipt of grants that made it possible for them to participate

in such programs, in violation of the Food Stamp Act.[6] Cf. Shea v. Vialpando, 416 U.S. 251 (1974).

C. Appellant Butz's asserted fear that the District Court's reasoning "would appear to require the Secretary to allow a deduction from gross income for all nonfood expenses . . . that may be deemed either necessary or socially desirable" (Jurisdictional Statement of Appellant Butz, at 13) ignores both the factual context of this case and the careful, unambiguous language of the District Court's Memorandum and Judgment Order. The District Court's opinion and order require only that the Appellants not include ultimately in the adjusted "income" figure that determines the level of a recipients' Food Stamp assistance any government grants received by the recipient specifically to defray additional expenses that are necessary to participation in a government-sponsored education and training program. Thus, the District Court's decision does not require itemized deduction even of educational travel expenses -- let alone other nonfood expenses -- but rather requires only that government education grants that by definition are not generally available for food, shelter, clothing, and so forth not be counted in "income" so as to reduce Food Stamp benefits. The Appellants plainly are still free under the District Court's decision to base the amount of Food Stamp assistance on the amount of a household's "income" -- such as wages, bank accounts, or AFDC payments -- that is generally available for food and nonfood expenses, without permitting itemized deductions for all nonfood expenses.

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6 In effect, the Appellants' regulations cause the Food Stamp Act and the State's Individual Education and Training Program, which is funded in part through Title XX of the federal Social Security Act, to work at cross purposes with one another: part of the assistance provided through the latter so that Appellee may obtain training that will make her self-sufficient is taken away by the former, so that her ability to provide her family with a nutritional diet is reduced. In short, the Appellants would give recipients such as Appellee a Catch-22 choice to either participate in training that would enable them to become economically self-sufficient, or feed themselves and their children adequately -- but not both.

D. The State Appellants' argument (Jurisdictional Statement, at 7) that Appellee could have diverted her monthly training expense grant from educational travel to food purchases by moving to Davenport is unsupportable by the record in this case or by common sense, and in any event misses the point of the District Court's Order. First, the State Appellants themselves approved Appellee's Individual Education and Training Plan -- which included her commuting between Muscatine and Davenport -- and stipulated in the District Court that her $44.00-per-month training expense grant was "for necessary commuting" in connection with that Plan.[7] Moreover, the State Appellants' argument assumes that Appellee did not really need any of her training expense grant to meet additional expenses attributable to her training program; but this assumption not only defies common sense, it is also directly contrary to the only possible justification for favoring Appellee with such a grant over other Food Stamp recipients who were not participating in an Individual Education and Training Plan -- that Appellee would have additional expenses on the order of $44.00 per month as a result of her training activities.[8] Finally, if the underlying assumptions of the State Appellants' argument were true, the District Court's order simply would not apply, since it was tailored to require exclusion from Food Stamp "income" only of "any amount received . . . for necessary commuting expenses . . . ."[9]

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7 Stipulation filed January 23, 1974, Paragraph 6 (emphasis added).

8 The State Appellants' argument also ignores the considerable expense and disruption that would be associated with moving a family from one city to another.

9 402 F. Supp. at 408, Jurisdictional Statement of Appellant Butz at 25a (emphasis added).

E. Both the Secretary and the State Appellants point to 7 C.F.R. 271.3(c)(1)(iii)(a), which provides for an exemption from Food Stamp "income" of 10% of any "income from compensation for services performed as an employee or training allowance not to exceed $30 per household per month," as a reasonable means of dealing with Appellee's training expense grant. However, even a cursory consideration of how this exclusion would apply to Appellee shows that it is grossly inadequate to cure the violations of the Food Stamp Act that are analyzed above and in the District Court's opinion. Under 7 C.F.R. 271.3(c)(1)(iii)(a), Appellee would be entitled to a total deduction of only $4.40 of her $44.00 training expense grant -- leaving her with $39.60 still added to "income", and consequently with a substantial deduction in Food Stamp benefits for her family, despite the fact that none of her grant was available as "income" for food-purchasing purposes.[10] Thus, even with the 10% deduction, a recipient in Appellee's position has substantially less food-purchasing power and is discouraged from pursuing training toward self-sufficiency under the federal and state regulations challenged herein.

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10 The 10% deduction provided for in 7 C.F.R. 271.3(c)(1)(iii)(a) may make sense when applied to earned income or other allowances that are generally available for family expenses for food, clothing, shelter, etc. But it does not make sense to include in "income" 90% of a grant that is specifically designed and used only for additional necessary expenses connected with education, since this is tantamount to saying that only ten percent of the grant really is necessary for such expenses.

II.

THE APPELLANTS' POLICIES ALSO VIOLATED THE FIFTH AND FOURTEENTH AMENDMENTS.

Although the District Court's holding that the Appellants' policies violated the Food Stamp Act effectively disposes of the action in favor of Appellee, the District Court also held in the alternative that the Appellants' policies violated the Equal Protection and Due Process Guarantees of the Fifth and Fourteenth Amendments.

A. Equal Protection.

The District Court correctly found that the challenged state and federal regulations created a distinction between two classes of food stamp recipients: (a) those receiving an allowance for necessary educational travel expenses, and (b) those not receiving such a grant. These two classes of recipients were similarly situated in terms of disposable income and food purchasing power, but were treated dissimilarly by Appellants with regard to the amount of Food Stamp assistance which they received. Using a "traditional", or "minimum rationality", test, the District Court found that this distinction did not further any purpose of the Food Stamp or any other legitimate governmental interest, and consequently held that it violated Equal Protection. 402 F. Supp. at 405-407; Jurisdictional Statement of Appellant Butz at 16a-19a. See also, U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973).

The Secretary does not attempt directly to justify the classification invalidated by the District Court; rather, he suggests that the District Court's decision discriminates against a third group of recipients: those who have "commutation" expenses but who do not receive a travel allowance. (Jurisdictional Statement, at 14). It is of course true that under the District Court's Order, a Food Stamp recipient who spent X dollars per month on educational travel but who did not receive an off-setting grant

for this expense under an Individual Education and Training Plan would not be as well off economically as an otherwise similarly situated recipient who did receive such a grant from the government to cover the same expenses. But this difference would not be a result of the second recipient's receiving more Food Stamp assistance than the first (under the District Court's decision, both recipients would receive the same amount of Food Stamp benefits). Rather, any discrimination between the two recipients would be attributable solely to the second recipient's being favored with a governmental educational expense grant under his Individual Education and Training Program -- and not to the District Court's Order with regard to Food Stamp assistance.[11]

B. Due Process.

The District Court also held that the reduction of a recipient's Food Stamp assistance on the basis of her receipt of a grant for necessary commuting expenses in connection with an Individual Education and Training Plan created a conclusive presumption that such a recipient has greater food purchasing power -- and hence less need for Food Stamps -- because of that grant. This presumption properly was found to be "contrary to fact," primarily because the grant was designed and used "to defray the costs of commuting . . . ." 402 F. Supp. at 407; Jurisdictional Statement

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11 The arguments now made by Appellants to justify the above-described classification fail totally to meet the District Court's analysis. The main justification offered by the State Appellants -- the assertion that Appellee could have diverted her educational travel grant to food purchases by moving her family to Davenport -- has already been dealt with above in connection with the Food Stamp Act. And the second argument of the State Appellants, that the challenged regulations could deter Food Stamp recipients from "unduly prolonging their education" (Jurisdictional Statement, at 7) can have no sensible application in this case: Surely if the Appellants wished to discourage a Food Stamp recipient from "prolonging" her education, they would not give her an educational expense allowance or approve her for an Individual Education and Training Plan in the first place.

of Appellant Butz, at 19a-20a.

Clearly, the conclusive presumption enjoined by the District Court's decision in this case was at least as objectionable constitutionally as the presumption invalidated by this Court in U.S. Department of Agriculture v. Murry, 413 U.S. 508 (1973). While the legislative presumption involved in Murry might have been true in a substantial number of cases, grants for "necessary commuting expenses, pursuant to an Individual Education and Training Plan" cannot increase the food-purchasing power of the recipient thereof. See also, Vlandis v. Kline, 412 U.S. 441 (1973); Bell v. Burson, 402 U.S. 535 (1971). Weinberger v. Salfi, 422 U.S. 749 (1975), is clearly distinguishable. That case involved a legislative classification that was a reasonable means of effectuating Congressional concern with potential abuse of the Social Security program, while the instant case involves a totally nonsensical administrative policy that defeats the purposes of the Food Stamp Act.[12]

III.

THIS APPEAL PRESENTS NO ELEVENTH AMENDMENT ISSUE.

The State Appellants argue that the District Court's order that the future Food Stamp purchase prices of persons in the class represented by Appellee be recomputed so as to compensate them for benefits wrongfully denied in the past raises an Eleventh Amendment problem. This argument fails for at least three reasons. First, the costs that must be shared by the State of Iowa under 7 U.S.C. §2024 are only administrative costs, and not the cost of the Food Stamp coupons themselves. But these costs are no different

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12 Lavine v. Milne, _____ U.S. _____, 44 U.S.L.W. 4295 (1976), is even more clearly distinguishable, since it deals with a rebuttable presumption.

from the costs that are involved in any judicial decision that requires a future change in welfare administration, see, e.g., U.S. Department of Agriculture v. Murry, 413 U.S. 508 (1973), U.S. Department of Agriculture v. Moreno, 413 U.S. 528 (1973), Jiminez v. Weinberger, 417 U.S. 628 (1974), and do not require the kind of payment from the state treasury that is covered by Edelman v. Jordan, 415 U.S. 651 (1973). Second, 7 C.F.R. 271.1 (o)(11), by which States participating in the Food Stamp Program are bound, provides for essentially the same kind of "credit for . . .lost benefits" when it is determined that a household "has been improperly denied program benefits . . . ." Finally, the State Appellants failed to raise any Eleventh Amendment issue below, and this Court therefore should not consider it. McCullough v. Kammerer Corp., 323 U.S. 327 (1945).

IV.

THE ISSUES RAISED IN THIS APPEAL ARE NOT SUFFICIENTLY SIGNIFICANT TO REQUIRE FURTHER ARGUMENT.

As the District Court recognized, the federal and state regulations involved in this action, as applied to Appellee and the class she represented, were totally irrational and directly violative of the Food Stamp Act. At the same time, the District Court's Order was carefully and narrowly drawn so as to have relatively little precedential value[13] and only minimal practical impact on the Food Stamp Program. For these reasons, the issues presented in this appeal are not substantial, and no useful purpose would be served by further consideration thereof by this Court.

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[13] Thus, the District Court correctly distinguished cases, such as Chek v. Butz, U.S. District Court, N.D. Calif., No. C-75-0559CBR (1975), that appeared on the surface to have some similarities with this action. 402 F. Supp. at 408; Jurisdictional Statement of Appellant Butz at 21a.

CONCLUSION

For the reasons stated above, the unanimous decision of the three-judge District Court should be affirmed without further argument or briefing.

Respectfully submitted,

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College of Law
Iowa City, Iowa 52242

APPENDIX A

Iowa Department of Social Services, Employees' Manual, Section XIII-8-5:

INDIVIDUAL EDUCATION AND TRAINING PLAN

* * *

Training Related Expense

Individual Education and Training Plan clients attending institutional training facilities are entitled to a training related expense allowance. Clients involved in part-time training plans receive 15¢/mile for those miles traveled between home, child care facility and training facility. The total monthly allowance however cannot exceed $45.00. Clients enrolled in full-time training programs are entitled to a full monthly TRE of $60.00. Full time is interpreted as being the period of time established by the training facility as being "full time". In the absence of such an established time framework, full time will be considered a minimum of 30 hours/week. Any plan involving fewer hours than the criteria established for full time will be considered part-time. Payment of TRE should commence for that month that the client begins training and must be terminated once the client has completed.